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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 29TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.555/1994

BETWEEN:

Smt.Narayanamma
w/o.late Bangalore Thimmaiah,
Major NO.100, Behind Krishna Bhavan,
Bazar Road,
Chikkaballapura, KOLAR .. petitioner

(By Sri.M.R.Muniraju - Adv.)

And :-

V.S.Krishnaiah Setty
s/o.Oletti Suryanarayana Setty
Major, B.B.Road, Chikkaballapur,
Kolar. .. Respondent

(By Sri.P. Subba Rao - Adv.)

This HRRP is filed under Sec.115 of CPC,
against the order dtd.21.1.1994 passed IN HRRP
No.3/92 on the file of the Dist and Sessions
Judge, Kolar dismissing the revision petition and
confirming the order dtd.10.12.1991 passed in HRC
No.22/75 on the file of the Munsiff,
Chickballapur, allowing the petition filed under
Sec.21(1)(a) of KRC ACT.

This HRRP coming on for hearing this day,
the Court made the following:

O R D E R..

ORDER

Respondents to this petition had filed an eviction petition against the petitioners herein under Sec.21(1)(a),(h) & (j) of the Karnataka Rent Control Act (For short THE ACT) in respect of the schedule premises. In the first instant by an order dtd.29.3.1978, the learned Munsiff, allowed the eviction petition. This order was challenged by the tenant in Rent REvision and was set-aside by the learned Dist.Judge, however the same was remanded to the file of the learned Munsiff. After remand the learned Munsiff in accordance with the directions of the remand order, conducted a fresh enquiry, and has passed an order of eviction against the petitioner on the ground that the petitioner has failed to pay the demanded arrears of rent from 15.3.1975 till 15.8.1975 in a sum of Rs.55/-, the rent being calculated @ Rs.5/- per month. This order was challenged before the Learned Dist.Judge by the tenant/petitioner in a Rent Revision Petition No.3/92. Learned Dist.and Sessions Judge agreed with the findings of the

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learned Munsiff and dismissed the petition. These two orders have been challenged by the tenant in this petition under Sec.115 of CPC.

The contention of the petitioner is that notice contemplated under Sec.21(1)(a) was not served on her before filing of the petition which was mandatory. Hence the very petition itself was not maintainable; this contention when taken before the learned Dist.Judge has been repelled by holding that the respondent/landlord has produced the copy of the notice vide Ex.P.7 which has been received by the tenant on 22.4.1975 vide Ex.P.8 - the postal acknowledgement. This finding being essentially a finding of fact cannot be interfered with. Petitioner is unable to show how this finding is perverse or not based on records.

The other contention is that the Courts below have failed to appreciate that there was no wilfull default in paying the demanded arrears of rent. This contention is only stated to be rejected, inasmuch as, ~~however~~ the tenant is bound to pay the demanded arrears of rent if he is due unless as contemplated by

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law he states sufficient cause for not paying the same. That is not the case here, but the intention for not paying the same is totally irrelevant.

No other grounds are urged.

There is no merit in this petition. Petition is liable to be dismissed and is accordingly dismissed. However the tenant is granted one years time to quit and deliver vacant possession of the premises to the landlord.

Sd/-
JUDGE

brn